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Auto Auction of Montana

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re:

INCREDIBLE AUTO SALES, LLC,

Debtor.

CASE NO. 06-60855

**OBJECTION TO CASH
COLLATERAL MOTIONS**

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AUTO AUCTION ASSOCIATES OF MONTANA, INC., d/b/a AUTO AUCTION OF MONTANA a/k/a AUTO AUCTION OF BILLINGS ("Auto Auction") hereby objects to the Debtor's Emergency Motion As to Use of Cash Collateral and Offer of Adequate Protection to Hyundai Motor Finance Company (the "Debtor's Motion") and Hyundai Motor Finance Company's ("HMFC") Emergency Motion to Prohibit or Condition Use, Sale or Lease of Inventory and/or Cash Collateral (the "Hyundai Motion").

The grounds for this objection are that in a separate

adversary proceeding this Court granted a TRO prohibiting the Debtor from encumbering or transferring certain vehicles that are subject to a reclamation claim by Auto Auction. Auto Auction, the Debtor and HMFC ultimately reached an agreement in the adversary proceeding that called for the vehicles to remain segregated and not subject to transfer or encumbrance pending further order of the Court in the Adversary Proceeding. The Court approved that stipulation in the adversary proceeding.

The Debtor's Motion includes vehicles that are the subject of the adversary proceeding and the parties stipulation. In particular, the following stock numbers for vehicles are set forth in the motions and also clearly involve vehicles which are the subject of the adversary proceeding: p4096; p4097; p4098; p4099; p4101; p4104; p4105; p4106; p4107; p4108; p4109; p4110¹.

The attempt to list these vehicles as subject to a cash collateral motion is clearly contrary to the parties intentions in the adversary proceeding stipulation. The sale of the vehicles in the ordinary course could completely obliterate the rights of Auto Auction and the Court should not permit any of these vehicles to be sold.

¹It is perhaps also significant that several of the vehicles subject to the parties agreement, and this Court's order, cannot be located at the Debtor's property. Nor can these vehicles be located on the inventory list submitted with the Debtor's Motion. The Court restrained the sale of the vehicles on the list on October 20, 2006 and the parties signed the stipulation on October 23, 2006, so it appears that perhaps six (6) or more have been sold. The question that needs to be answered now is were the vehicles sold contrary to the TRO or the Stipulation?

In addition, as has been pointed out by Manheim Services Corporation d/b/a South Seattle Auto Auction ("South Seattle Auto Auction"), HMFC is already over secured by an estimated \$616,620.42. On top of this sum, the Debtor is proposing to offer additional adequate protection valued at \$800,000.00. This means that HMFC will be over secured in excess of \$1,400,000.00.

Neither HMFC nor the Debtor will be seriously impacted by continuing to prohibit the sale of the vehicles which are subject to the reclamation claims of Auto Auction and South Seattle Auto Auction. The total face value of the reclamation claims of Auto Auction and South Seattle Auto Auction are approximately \$254,390.00 (\$184,390.00² for Auto Auction and \$70,000.00 for South Seattle Auto Auction). Assuming the Court ordered the return of every vehicle claimed by Auto Auction and South Seattle Auto Auction, HMFC would remain over secured in excess of \$1,145,000.00. Given this fact, the Court should not permit any cash collateral order adversely impact the vehicles subject to Auto Auction's reclamation claim.

The Court should deny the Debtor's Motion and HMFC's Motion to the extent the motions seek to permit the sale or encumbering of the vehicles listed on Exhibits A and A-1 on the parties

²The Debtor has listed twelve of nineteen vehicles claimed by Auto Auction. The remaining seven cannot be located on the Debtor's list. The Debtor has valued the twelve vehicles claimed by Auto Auction still in the Debtor's inventory as worth \$117,350.00, which further reduces the impact of reclamation on the Debtor and HMFC.

stipulation, as approve by this Court.

DATED this 27th day of October, 2006.

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By: /S/ Bruce F. Fain
Bruce F. Fain
Attorneys for Plaintiff Auto
Auction of Montana

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 27th day of October, 2006, a copy of the OBJECTION TO CASH COLLATERAL MOTIONS was served upon counsel of record by the following method:

- 1-5 CM/ECF
- _____ Hand Delivery
- 6 Mail
- _____ Overnight Delivery Service
- _____ Fax
- _____ E-Mail
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_____/S/ Bruce F. Fain